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THE STATE OF TEXAS v.
DEY, INC., ET AL.

JUDY WATERER
October 24, 2001

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(1) CAUSE NO. GV002327
(2) THE STATE OF TEXAS) IN THE DISTRICT COURT
ex rel.)
(3) VEN-A-CARE OF THE)
FLORIDA KEYS, INC.)
(4) Plaintiffs.)
(5) VS.)
(6)) TRAVIS COUNTY, TEXAS
(7) DEY, INC.; ROXANE)
(8) LABORATORIES, INC. and)
WARRICK PHARMACEUTICALS)
(9) CORPORATION,)
(10) Defendants.) 53rd JUDICIAL DISTRICT
(11) ORAL AND VIDEOTAPED DEPOSITION OF
(12) JUDY WATERER
(13) October 24th, 2001
(14)
(15) ORAL AND VIDEOTAPED DEPOSITION OF JUDY WATERER,
(16) produced as a witness at the instance of the Plaintiff
(17) and duly sworn, was taken in the above-styled and
(18) numbered cause on the 24th of October, 2001, from
(19) 8:20 a.m. to 5:10 p.m., before Debra L. Sietsma, CSR
(20) in and for the State of Texas, reported by machine
(21) shorthand, at Vorys, Sater, Seymore & Pease, LLP,
(22) 52 East Gay Street, Columbus, Ohio, pursuant to the
(23) Texas Rules of Civil Procedure and the provisions as
(24) previously set forth.
(25)

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(1) they, in turn, can pass that on to their customers?
(2) A: I do not have any say over what they pass on
(3) to their customers. My relationship is with the
(4) wholesaler.
(5) Q: I realize that, but it was your understanding
(6) that this information would be distributed to
(7) customers of wholesalers?
(8) A: AWP was generally distributed to customers.
(9) The wholesaler acquisition price — generally they
(10) didn't want customers to know, because that's what
(11) they were purchasing the product for.
(12) Q: How many years did you hold the position as
(13) multisource sales representative at DuPont?
(14) A: I left DuPont in — five years ago, fivish.
(15) Q: So from the mid '80's to roughly 1990?
(16) A: Early '90's.
(17) Q: Is that about the time you got your MBA?
(18) A: Yes.
(19) Q: Did you get your MBA while you were working
(20) for DuPont?
(21) A: Yes.
(22) Q: I take it at some point you left DuPont?
(23) A: Yes.
(24) Q: And what company did you go to work for when
(25) you left DuPont?

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(1) A: Roxane Laboratories.
(2) Q: What prompted you to make an employment
(3) change to Roxane Laboratories?
(4) A: Personal reasons.
(5) Q: I don't want to pry, but was it for
(6) geographic personal reasons or —
(7) A: Yes.
(8) Q: To get closer to family?
(9) A: Yes.
(10) Q: Are you from the Columbus area?
(11) A: No, but my husband — my husband's kids are
(12) out here.
(13) Q: Okay. Well, that draws me back a little bit.
(14) How many times have you been married?
(15) A: One.
(16) Q: One?
(17) A: (Nods head affirmatively).
(18) Q: Do you have any children?
(19) A: No.
(20) Q: But you have some stepchildren?
(21) A: Yes.
(22) Q: How many stepchildren do you have?
(23) A: Two.
(24) Q: How old are they?
(25) A: 19 and 20.

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(1) Q: And so in the — in the early '90's you moved
(2) from Pennsylvania to Columbus to be closer to your
(3) stepchildren?
(4) A: It was closer to the mid '90's, but yeah.
(5) I've been — I've been in Columbus for about five and
(6) a half years.
(7) Q: Okay.
(8) A: So I think it was ninety — it was '96.
(9) Q: In 1996 you came to work for Roxane?
(10) A: Correct.
(11) Q: Do you recall what month?
(12) A: It was the first working day in July.
(13) Q: Who hired you?
(14) A: Ed Tupa.
(15) Q: How did you become aware that Roxane was
(16) hiring?
(17) A: Ed had been courting me, if you will, for
(18) probably six months.
(19) Q: Did you and Ed have a previous relationship?
(20) A: No.
(21) Q: How did Ed first begin — strike that.
(22) How did Ed come to know you initially?
(23) A: A headhunter contacted me. And I am always
(24) interested in understanding what other opportunities
(25) are available; so if something interesting to me comes

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(1) up, I usually meet someone to find out what's going
(2) on.
(3) Q: And through the headhunter you were put in
(4) contact with Roxane?
(5) A: With Ed Tupa, yes.
(6) Q: With Ed Tupa at Roxane?
(7) A: Yes.
(8) Q: Does Ed work for Roxane?
(9) A: No longer, but at the time he did.
(10) Q: Who does Ed work for now?
(11) A: I'm not sure if he's employed or not. He's
(12) left the company. I believe he's retired.
(13) Q: Do you recall what Ed's job title was?
(14) A: Vice-president, Sales and Marketing.
(15) Q: And when you were hired, what were you hired
(16) to do? What was your job title?
(17) A: Manager of program development.
(18) Q: What are the job responsibilities that
(19) comprised manager of program development initially?
(20) A: It was — it was a position that didn't exist
(21) initially; so for the most part, I had to carve it
(22) out. And it would be most appropriately described in
(23) a more traditional version as product management.
(24) Q: Product management?
(25) A: I was responsible for all the marketing

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[1] activities, including development of new programs,
[2] selection of development candidates for new products
[3] under development, advertising promotion, training
[4] sales representatives, covering new launches,
[5] designing packaging, et cetera.

[6] Q: What products were you responsible for?

[7] A: At the time I got there, there were over 400;
[8] and, again, it was just the multisource line. Roxane
[9] has a brand side and a multisource side.

[10] Q: So at the time you were hired, you were hired
[11] to be the product manager; is that correct?

[12] A: I was hired to be the program development
[13] manager, whose responsibilities included —

[14] Q: Managing products?

[15] A: Yes.

[16] Q: And the products for which you were managing
[17] were over 400 multisource —

[18] A: Uh-huh.

[19] Q: — products?

[20] A: Uh-huh, yes.

[21] Q: Advertising, training, marketing — what
[22] other duties did you list? I'm sorry.

[23] A: Development, interaction with development.

[24] Q: Development meaning R&D, like creation of a
[25] drug? What do you mean by "development"?

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[1] A: Exactly that.

[2] Q: What about pricing?

[3] A: Pricing.

[4] Q: What was your involvement in developing
[5] pricing?

[6] A: I suggested it and had it routed for
[7] approval.

[8] Q: Would it be fair to say that you had primary
[9] input in setting pricing for your 400 multisource
[10] products?

[11] A: Yes.

[12] Q: Who oversaw — strike that.

[13] Who did you forward your pricing
[14] suggestions onto?

[15] A: Over time the group of people that had to
[16] approve it changed, but I — I would say the constant
[17] ones over time would have been marketing management,
[18] sales management, contracts management and then
[19] someone at a senior level of management.

[20] Q: Can you name specifically persons that were
[21] most involved in —

[22] A: Initially or — I mean it's — we have had
[23] very, very many changes in our company.

[24] Q: I realize.

[25] A: And our processes and procedures have evolved

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[1] and streamlined, so it has — it has changed
[2] dramatically over time, so I could name a lot of
[3] names.

[4] Q: Okay. Well, let's just take it year by year,
[5] then.

[6] In 1996 —

[7] A: I couldn't begin to do that.

[8] Q: You can't?

[9] A: I could not begin to tell you who signed
[10] every document.

[11] Q: Oh, I realize that. I'm not trying to be
[12] unreasonable and ask you to list every name of every
[13] person who signed a document, but the people who were
[14] most heavily involved —

[15] A: Okay.

[16] Q: — do you recall some of their names?

[17] A: For marketing it would have been me.

[18] Q: Yes.

[19] A: For senior management at various times it was
[20] Ed Tupa. At various times it was who he reported to,
[21] and that changed over time.

[22] Q: Pardon me.

[23] A: Okay.

[24] Q: Who would have — who did Ed Tupa report to
[25] initially in 1996?

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[1] A: Jerry Wojta.

[2] Q: Can —

[3] A: W-O-J-T-A.

[4] Q: Okay. Who — anyone else in senior
[5] management that was involved —

[6] A: Not that I'm aware of.

[7] Q: — to your recollection?

[8] What about in the — okay. In marketing
[9] that was you, correct?

[10] A: Correct.

[11] Q: What about in sales?

[12] A: That changed over time. The most common one
[13] would have been Rich Feldman. Rich was not there when
[14] I initially got there, but I don't recall doing price
[15] changes before he got there.

[16] Q: Do you recall doing any pricing before Rich
[17] got there?

[18] A: I don't recall. I don't recall doing price
[19] changes.

[20] Q: Who did Rich report to?

[21] A: Ed Tupa.

[22] Q: Who did Jerry report to?

[23] A: I don't know.

[24] Q: Was Jerry employed by Roxane?

[25] A: Yes. I believe he was president and COO or

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(1) something along that title line.
(2) Q: If I can, I'm going to step back just a
(3) second.
(4) How many employees does Roxane have?
(5) A: I don't know.
(6) Q: Do you have a basic ballpark figure?
(7) A: Not that I'd be comfortable with. It's
(8) primarily a manufacturing site, and I'm not really
(9) involved in the operations side. Hundreds.
(10) Q: Let's exclude the operations side, which —
(11) well, hold on a second.
(12) When you say "operations," do you mean
(13) manufacturing?
(14) A: Yes.
(15) Q: Okay. Nonmanufacturing employees — does
(16) Roxane have over a hundred nonmanufacturing employees?
(17) A: Yes.
(18) Q: Does it have over 200 nonmanufacturing
(19) employees?
(20) A: I'm not sure.
(21) Q: Okay.
(22) A: I don't know.
(23) Q: Other than Rich, Ed, Jerry, yourself, who
(24) else would have been involved in prices?
(25) A: In — in 1996 —

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(1) Q: Yes.
(2) A: — we would have probably — '96 — in '96 it
(3) was routed past John Swartz as well.
(4) Q: John Swartz?
(5) A: Uh-huh.
(6) Q: What was John Swartz' title?
(7) A: He was the head of finance. I think he was
(8) corporate controller or — I'm not positive of the
(9) title.
(10) Q: When you would submit your pricing decisions
(11) for review by these individuals that we've just
(12) listed, typically would your recommendations be
(13) accepted?
(14) A: I can't remember a time when they weren't.
(15) Q: So to your memory, they were always accepted?
(16) A: Yes.
(17) Q: Currently this litigation, as it pertains to
(18) Roxane, involves the drug Ipratropium bromide.
(19) Are you aware of that?
(20) A: Yes.
(21) Q: Do you recall setting the price for
(22) Ipratropium bromide when it first came on the market?
(23) A: I wasn't employed by the company when
(24) Ipratropium was launched.
(25) Q: Was Ipratropium bromide launched in June of

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(1) 1996?
(2) A: I believe so.
(3) Q: Who do you — strike that.
(4) Do you know who was in charge of
(5) launching Ipratropium bromide?
(6) A: Tom Via was the one who did most of the work
(7) on it.
(8) Q: What was Tom Via's job title at that point?
(9) A: I don't know.
(10) Q: Were you hired to replace Tom Via?
(11) A: No.
(12) Q: Were you hired to take over some of Tom Via's
(13) job responsibilities?
(14) A: Indirectly. That wasn't the purpose of my
(15) hiring; but a lot of his multisource responsibilities
(16) moved over to me, yes.
(17) Q: Why is it that Roxane created a new position?
(18) Do you — strike that.
(19) You said earlier that you were hired and
(20) that a position was created when you were hired; is
(21) that correct?
(22) A: A created position — a need for the
(23) responsibilities of that position were identified, so
(24) they recruited somebody to fill that in.
(25) Q: And do you —

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(1) A: They didn't like me and make up a job.
(2) Q: Right. I understand. And then — do you —
(3) do you have any understanding as to why there was a
(4) need to create that job?
(5) A: Yes.
(6) Q: And what was that?
(7) A: They didn't have anybody currently doing that
(8) type of job. And in a multisource business, retail —
(9) Roxane primarily had brand products and hospital
(10) products. Hospital products, on the generic side, are
(11) marketed very differently than retail products. They
(12) were expanding their generic emphasis, and they wanted
(13) to bring in increasing levels of expertise on the
(14) retail side.
(15) Q: To what extent were they expanding their
(16) generic business?
(17) A: I don't understand what you're asking.
(18) Q: When you became the multisource program
(19) development — did I get that title right —
(20) A: More or less.
(21) Q: — manager of program development — you
(22) mentioned that there were 400 multisource drugs.
(23) A: Correct.
(24) Q: Do you have an understanding of how many
(25) multisource drugs Roxane had, for instance, in 1995?

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[1] Do you have a basic understanding of
[2] what city he lives in?
[3] A: I believe he's still in Dublin.
[4] Q: Dublin?
[5] A: Uh-huh, yes.
[6] Q: Is that a town nearby Columbus?
[7] A: Columbus, yes.
[8] Q: They're sister cities?
[9] MR. COVAL: It's a suburb.
[10] THE WITNESS: It's a suburb.
[11] Q: (BY MR. ANDERSON) A suburb. Okay.
[12] What about Jerry Wojta?
[13] A: Wojta.
[14] Q: Wojta.
[15] A: He has lived in the Columbus area for many
[16] years. I assume he still does.
[17] Q: Is he still president and COO of Roxane?
[18] A: No. He retired.
[19] Q: But you believe he still lives in Columbus?
[20] A: I believe so.
[21] Q: Do you know when Jerry retired?
[22] A: Couple of years after I started.
[23] Q: 1998 sometime or —
[24] A: I'm not good with time lines.
[25] Q: Okay. Do you recall when Ed Tupa retired?

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[1] A: Around two years ago.
[2] Q: Okay.
[3] A: He left after Jerry did. There was probably
[4] somewhere around a year separating it, but I don't
[5] know the precise years.
[6] Q: Who's the new president and CEO of Roxane?
[7] A: Doesn't exist.
[8] Q: Who's the top executive of Roxane?
[9] A: I — I'm not sure how to answer that. There
[10] is — the manufacturing side — it — the management
[11] has been split up and reports to different areas, so
[12] the production side now goes through Peter Dickinson.
[13] Q: What about the sales —
[14] A: Sales and marketing goes through
[15] Tom Russillo.
[16] Q: Can you spell Prussillo?
[17] A: R —
[18] Q: Oh, excuse me.
[19] A: Russillo, R-U-S-S-I-L-L-O.
[20] Q: Thank you.
[21] Do you know what Tom's title is?
[22] A: I believe it's president and COO of Ben Venue
[23] Laboratories.
[24] Q: Okay. President and COO of what?
[25] A: Ben Venue.

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[1] Q: Two words?
[2] A: Yes, V-E-N-U-E.
[3] Q: Is Ben Venue a subsequent company to Roxane?
[4] A: I don't know what you mean by "subsequent."
[5] It was acquired after Roxane was acquired.
[6] Q: Pardon me. That was a poor question.
[7] Is Ben Venue a subsidiary of Roxane?
[8] A: No.
[9] Q: Is it a subsidiary of Boehringer?
[10] A: I don't believe that the legal definition is
[11] "subsidiary," but it is within the corporate umbrella
[12] of Boehringer Ingelheim.
[13] Q: Is it your understanding that
[14] Boehringer Ingelheim owns Ben Venue?
[15] A: In some — yeah, in a — in a very general
[16] way. How it's structured, I'm not —
[17] Q: Right. I'm not — I'm not asking you for
[18] some type of detailed analysis of the stock ownership
[19] of Ben Venue, but it's your understanding —
[20] A: It's privately held.
[21] Q: Right. Well, but there's still privately
[22] held stock.
[23] Is it your understanding that Boehringer
[24] owns Roxane?
[25] A: Yes.

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[1] Q: Where is Ben Venue?
[2] A: Cleveland — or Bedford, Ohio.
[3] Q: Bedford's a —
[4] A: Bedroom community of Cleveland.
[5] Q: Okay. When did Tom become — strike that.
[6] When did Tom leave Roxane?
[7] A: He was never at Roxane. He got bought with
[8] Ben Venue.
[9] Q: Okay. And the sales and marketing personnel
[10] of Roxane report to Tom Russillo, who's at Ben Venue?
[11] A: Correct.
[12] Q: Okay. Are there other divisions of Roxane
[13] that report to a senior person other than
[14] Peter Dickinson or Tom Russillo?
[15] A: I'm not sure. There's been a lot of
[16] transition.
[17] Q: When did the transition begin?
[18] A: Transition and change has been ongoing since
[19] I started with Roxane.
[20] Q: The transition and change impacted the
[21] corporate hierarchy of Roxane?
[22] A: Yes.
[23] Q: And that's been ongoing since you started?
[24] A: Yes.
[25] Q: How often would you say that job titles and

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[1] job responsibility reporting changes in Roxane?
[2] That may be too broad, but I'm trying —
[3] A: It's — it's constant.
[4] Q: — okay — I'm trying to get a feel for
[5] the — the timing of the different transitions.
[6] A: I mean I — I can answer regarding my
[7] management and my department.
[8] Q: Okay. Let's start there.
[9] How often has your management and the
[10] people that report to you and the people that you
[11] report to changed?
[12] A: Very little. I started out reporting to
[13] Ed Tupa. When he retired, I then reported to
[14] Tom Russillo. For a brief period of about a year he
[15] had a person that worked between he and I that, when
[16] Tom was unable to come down to Roxane, I would report
[17] through him to Tom; but officially, I always reported
[18] to Tom Russillo.
[19] Q: Okay. Unofficially, who is that person that
[20] you would — was the go-between between you and Tom?
[21] A: Tony Pera.
[22] Q: How do you spell Tony's last name?
[23] A: P-E-R-A.
[24] Q: Who is Tony employed by?
[25] A: Now he's employed by Akorn.

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[1] Q: Akorn Corporation?
[2] A: I don't know.
[3] Q: Is Akorn owned by Boehringer?
[4] A: No.
[5] Q: Is Akorn related in any way to Roxane?
[6] A: No.
[7] Q: Did Tony just take a new job with a totally
[8] independent company?
[9] A: Correct.
[10] Q: Where is Akorn located?
[11] A: I believe it's in the Chicago area.
[12] Q: Is Akorn in the drug industry?
[13] A: Yes.
[14] Q: Is it a drug manufacturer?
[15] A: I believe so.
[16] Q: Is there — are there other people that are
[17] on the same corporate level as Peter Dickinson and
[18] Tom Russillo in reporting at Roxane?
[19] A: I don't think so.
[20] Q: Okay. Do you —
[21] A: I'm not sure where regulatory and
[22] QC — exactly who they report to, so I'm — I'm not
[23] positive.
[24] Q: Who do you suspect that regulatory and QC
[25] report to?

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[1] A: I'm not going to speculate. That's — I mean
[2] I — I think everybody goes through Peter, but I'm not
[3] positive. I'm —
[4] Q: Is Peter employed by Roxane?
[5] A: I believe so.
[6] Q: Does Peter report to someone at Boehringer?
[7] A: Yes.
[8] Q: Do you know why the president and COO
[9] position held by — previously held by Jerry Wojta was
[10] dissolved?
[11] A: No.
[12] Q: Have you ever discussed the reason that that
[13] position was dissolved with anyone?
[14] A: Sure.
[15] Q: What are your — what — what do you believe
[16] is the reason for that, or what —
[17] A: I believe the company is restructuring and
[18] it's eliminating redundant positions and that it
[19] wanted to get leadership more from its own internal
[20] people than the people that they acquired companies
[21] from and they felt that that position was no longer
[22] appropriate in the restructuring. What their actual
[23] reasons were — that's just my estimation of what it
[24] is.
[25] Q: Okay. Since 1996 and your involvement with

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[1] Roxane, how many companies has Roxane acquired?
[2] A: Roxane has not acquired any, to my knowledge.
[3] Q: How many companies have been acquired by
[4] Boehringer that have become part of the Roxane
[5] corporate structure?
[6] A: None that I'm aware of.
[7] Q: Well, you mentioned that there was an effort
[8] to remove redundant positions —
[9] A: Uh-huh.
[10] Q: — and persons that may have been acquired in
[11] previous company acquisitions; is that correct?
[12] A: I think there was a natural attrition and
[13] that, as people retired, they structured things more
[14] to bring their satellite companies within the
[15] corporate umbrella.
[16] Q: Do you have any understanding as to how long
[17] Jerry Wojta was with Roxane?
[18] A: Many, many years.
[19] Q: Over ten?
[20] A: Yeah.
[21] Q: When — I think previously you mentioned that
[22] Roxane had been purchased at some point in time by
[23] Boehringer?
[24] A: Yes.
[25] Q: When was that? Do you know?

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(1) A: Not that I recall.
(2) Q: Okay. And when you emphasized pharmaceutical
(3) marketing, can you just give us a general idea of what
(4) type of courses were in that core educational area?
(5) A: The entire program was a program designed
(6) specifically for pharmaceutical marketing, so all of
(7) our case studies involved pharmaceutical interests.
(8) Whether we were working in any of the modules, whether
(9) it was economics or statistics, it was always
(10) pharmaceutical based.
(11) Q: Okay. And did any of the case — was it
(12) case-study type approach?
(13) A: Often, yes.
(14) Q: Your graduate school was?
(15) A: A portion of it, yes.
(16) Q: And did those case studies at any time deal
(17) with the impact of pharmaceutical marketing on
(18) particular pharmaceutical customers or buyers?
(19) A: Not that I recall.
(20) Q: So it was always purely from the
(21) manufacturer's perspective?
(22) A: I'm not sure. It was very related to brand,
(23) so most of the — most of the studies had to do with
(24) how to position a brand and increase market share and
(25) how to target customers and select the most important

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(1) customer bases and then analyze the data that you had.
(2) Q: Okay. Well, did you learn about how to place
(3) generics and market generics in graduate school?
(4) A: No.
(5) Q: So that was more on-the-job training?
(6) A: Yes.
(7) Q: Did you have any postgraduate school courses
(8) or conferences or any kind of educational
(9) opportunities in the area of generics?
(10) A: I didn't have any college courses that
(11) specialized in generics that I recall.
(12) Q: Did — or have you found, now that you've
(13) been working in the pharmaceutical industry and
(14) emphasizing multisource and generic products, that the
(15) marketing and the sales marketing is different than it
(16) was for branded?
(17) A: Oh, it's entirely different.
(18) Q: Can you tell us in general how it's entirely
(19) different?
(20) A: In — on the brand side of the business your
(21) customer is different. You are not selling to the
(22) end-use customer. You're trying to persuade someone
(23) to write a — to write a prescription that will
(24) persuade someone to take it to a pharmacy that a
(25) pharmacist will fill. If the prescription is written

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(1) for the drug and it's protected by patent, that's what
(2) gets dispensed; so there is virtually no necessity to
(3) get into the finance and business end unless you're in
(4) the finance and billing department in a brand
(5) pharmaceutical company.
(6) Q: Okay.
(7) A: It's very unrelated to the business skills.
(8) It's much more clinical.
(9) Q: Well, since you were in the sales and
(10) marketing area of the brand side of the business, are
(11) the finance and business aspects of the brand sales
(12) important to the end-use customer, or at least the
(13) end-use medical provider?
(14) A: I would have to presume so, but it was never
(15) anything that we really considered.
(16) Q: Did you consider it in graduate school?
(17) A: Not that I specifically recall, no.
(18) Q: Have you considered it in connection with
(19) your generic marketing business?
(20) A: Other than the fact that we understand it's
(21) business related and our pricing must be competitive,
(22) no.
(23) Q: Your dead cost has to be competitive. Is
(24) that what you're saying, or your dead price?
(25) A: Our offer has to be competitive with that of

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(1) our competitors.
(2) Q: Well, how would you define your offer? I
(3) mean doesn't — isn't the competitor or the — isn't
(4) the customer only concerned about the bottom line
(5) price?
(6) A: As a generalization, yes.
(7) Q: Okay. Are there exceptions to that
(8) generalization?
(9) A: Yes.
(10) Q: Can you share some of them with us?
(11) A: Customers value service letter — levels.
(12) They value consistent supply. They value not having
(13) to change vendors constantly. They value having
(14) access to competent representation that can answer
(15) questions and resolve issues. They value other
(16) programs. Some of them will have education programs
(17) that they put a high value on support of. There's a
(18) myriad of different things.
(19) Q: Education programs.
(20) Can you give us an example?
(21) A: Some of the — of the customers have internal
(22) pharmacy education programs that they ask us to
(23) support. Upon occasion we've done that.
(24) Q: Have you done that for any home care-type
(25) companies?

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[1] A: I can't answer that.
 [2] Q: When you have these discussions about pricing
 [3] and the effect of various factors, including the
 [4] Medicaid rebate, do these discussions occur in any
 [5] kind of a meeting with other people, or is it just
 [6] something that you think about yourself?
 [7] A: Okay. I'm — I missed part of that. Can
 [8] you —
 [9] Q: Okay. When you have these discussions or
 [10] these considerations that you give to the impact of
 [11] Medicaid rebates on your pricing decisions —
 [12] A: Okay.
 [13] Q: — do these discussions occur in, like,
 [14] meetings among various Roxane employees, or is it
 [15] something that you just handle on your own and make a
 [16] few phone calls if you need the information?
 [17] A: It can be handled in different ways. Most
 [18] likely, someone in contracts will identify that we're
 [19] hitting a new pricing tier that hasn't been there
 [20] before and send up a flare that says, "Are you aware
 [21] of this? Do you care about this? Do you want us to
 [22] look into it further?" And if that happens, then it
 [23] will be looked into further.
 [24] If it's a situation where that's the
 [25] price and that's what's in the market and we do it

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[1] because we don't have a choice unless we just exit the
 [2] whole market, we would probably skip the assessment or
 [3] do it retro just to see how bad we got hurt; but
 [4] prices go down, rebates get impacted.
 [5] Q: So the only time the rebate issue comes to
 [6] your attention is when somebody from contracts calls
 [7] you and talks about it. Is that it?
 [8] A: Yes.
 [9] Q: So you — it's never discussed in any kind of
 [10] a committee meeting or a working group meeting or
 [11] anything like that?
 [12] A: No.
 [13] Q: Do you have a pricing committee at Roxane?
 [14] A: On the brand side they have one, yes.
 [15] Q: How about the generic side?
 [16] A: We have very brief participation in it, and
 [17] it was so cumbersome as to be ridiculous.
 [18] Q: When did you attempt to have a pricing
 [19] committee with respect —
 [20] A: I think it was about two years ago they spent
 [21] about a year trying to put it together. And then the
 [22] first time we tried to run pricing through, it
 [23] took months and months; and in the generic industry
 [24] you make price changes daily.
 [25] Q: Who was on the pricing committee?

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[1] A: I would not be able to answer that. The
 [2] whole world.
 [3] Q: The whole world?
 [4] A: The attachments were very extensive. I don't
 [5] remember who was on a committee and who was on a
 [6] subcommittee and who was involved in creating it.
 [7] It's not something that we had a great deal of
 [8] participation or use for.
 [9] Q: Were you involved in it?
 [10] A: I attended, I believe, one meeting in
 [11] Connecticut about it.
 [12] Q: Can you recall anybody else that was involved
 [13] in it?
 [14] A: My assistant product manager represented the
 [15] multisource interests in the business.
 [16] Q: That was who?
 [17] A: Lesli Paoletti.
 [18] Q: Lesli Paoletti.
 [19] Anybody else?
 [20] A: Not that I recall.
 [21] Q: Why did you go to Connecticut for this?
 [22] A: Because that's where brand land is and that's
 [23] where the process development was being driven.
 [24] Q: Including the generic process development?
 [25] A: They were trying to fit us into their system

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[1] that was —
 [2] Q: Who is they?
 [3] A: BI Pharmaceuticals was trying to have a
 [4] uniform pricing committee for all pricing decisions.
 [5] Q: Did you — did you resist their involvement
 [6] in your pricing decisions?
 [7] A: We — did I resist their involvement in our
 [8] pricing decisions?
 [9] I — I'm not sure I understand what you
 [10] mean by that.
 [11] Q: Well, it sounds to me like Boehringer
 [12] Ingelheim was — was trying to set up a committee
 [13] where there would be Boehringer Ingelheim corporate
 [14] personnel involved in your pricing decisions. Is that
 [15] an accurate statement?
 [16] A: Yes.
 [17] Q: Did you resist it?
 [18] A: We tried to have them involved in decisions
 [19] that were appropriate for their degree of
 [20] understanding of the business and leave them out of
 [21] the other decisions. It would be ridiculous for a
 [22] brand product manager to make a decision whether or
 [23] not I can match a contract price.
 [24] Q: But doesn't Boehringer Ingelheim have final
 [25] decision-making authority on what you do?

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[1] A: My boss has final decision-making on what I
[2] do.
[3] Q: Who is that?
[4] A: Tom Russillo.
[5] Q: And he works for — for Roxane at this point
[6] in time?
[7] A: No. He works for Ben Venue Laboratories.
[8] Q: Ben Venue at this time.
[9] We need to slow down — we need to put a
[10] little pause between when you talk and I talk.
[11] So is it your testimony that
[12] Boehringer Ingelheim has no ultimate authority with
[13] respect to your pricing?
[14] A: No.
[15] Q: Do they or don't they?
[16] A: My boss reports in through somebody that —
[17] he wouldn't make a decision if it was against what his
[18] boss wants.
[19] Q: And who is his boss?
[20] A: Currently it's Warner Gerstenberg.
[21] Q: Who is he?
[22] A: His boss. I can't remember his title.
[23] Q: Where does he work — who does he work for?
[24] A: I — I know his responsibilities are
[25] overseeing all of Tom's responsibilities. I believe

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[1] he's also responsible for Boehringer Ingelheim. I
[2] don't know his exact title or —
[3] Q: Where does he live?
[4] A: He works out of the Connecticut office.
[5] Where he lives, I don't know.
[6] Q: Is he a German?
[7] A: I don't know what — I don't know whether
[8] he's a nationalized American. He does have a German
[9] accent.
[10] MR. MCCONNICO: So do I. That doesn't
[11] mean anything.
[12] THE WITNESS: At some point in his life,
[13] he was.
[14] MR. BREEN: I lived in Germany for
[15] seven years and developed it myself.
[16] Q: (BY MR. BREEN) Have you ever been to
[17] Boehringer's headquarters in Germany?
[18] A: No.
[19] Q: Do you know whether Warner Gerstenberg was
[20] ever the president and chief operating officer of
[21] Roxane?
[22] A: He may have stepped in when — I think he was
[23] for a brief period.
[24] Q: When?
[25] A: When Jerry Wojta left, I think he might have

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[1] stepped in for a period. He never located to Columbus
[2] or was active in any of my interactions.
[3] Q: Have you ever had any discussions with
[4] Mr. Gerstenberg regarding pricing for Roxane's generic
[5] products?
[6] A: No.
[7] Q: Earlier you testified that you were a witness
[8] in a criminal case.
[9] What was the name of the company?
[10] A: Respiratory Distributors, Inc.
[11] Q: And the individual that was indicted?
[12] A: Neil Yeager.
[13] Q: Neil Yeager.
[14] Did you know Neil Yeager?
[15] A: I came to know him through a business
[16] relationship, yes.
[17] Q: And what was his — what was his duties with
[18] RDI?
[19] A: I believe he headed up their sales. I'm not
[20] sure. My relationship with him was he was who my
[21] contact was with the company regarding our contract
[22] negotiation.
[23] Q: RDI is a group purchasing organization?
[24] A: No.
[25] Q: What is it?

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[1] A: It's a distributor.
[2] Q: And what kind of customers does it distribute
[3] to?
[4] A: They were a distributor to respiratory home
[5] care pharmacy.
[6] Q: Home care pharmacies?
[7] A: Yes.
[8] Q: Okay. Who do you deal with at RDI now?
[9] A: We don't deal with RDI now.
[10] Q: Why not?
[11] A: Because they're not a customer that has
[12] responded in a reliable or upright and honest manner
[13] with us, so we don't deal with them anymore.
[14] Q: How did they —
[15] A: I'm not even sure they still exist.
[16] Q: Okay. How is it that they did not respond to
[17] you in a reliable, upright and honest fashion?
[18] A: We were told that they were reselling our
[19] product to non-end-use customers.
[20] Q: What is a non-end-use customer?
[21] A: Not a pharmacy.
[22] Q: So who were they selling it to?
[23] A: Other resellers.
[24] Q: Other distributors?
[25] A: I never saw specifically who they sold it —